



Reprinted
February 19, 2014

ENGROSSED SENATE BILL No. 394

DIGEST OF SB 394 (Updated February 18, 2014 2:40 pm - DI 87)

Citations Affected: IC 4-6; IC 23-17; IC 24-4.7; IC 24-5.

Synopsis: Consumer protection. Makes various changes to consumer protection provisions enforced by the attorney general, including: (1) enforcement of investigative demands by the attorney general; (2) acceptance of written assurance of voluntary compliance for certain violations concerning nonprofit corporations; and (3) changes to the definition of "consumer transaction" and to acts, omissions, and practices by a supplier that are prohibited in connection with consumer transactions for purposes of the deceptive consumer sales law.

Effective: July 1, 2014.

Bray, Zakas, Kruse, Tallian

(HOUSE SPONSORS — TORR, MCMILLIN, MESSMER)

January 14, 2014, read first time and referred to Committee on Civil Law.
January 28, 2014, amended, reported favorably — Do Pass.
January 30, 2014, read second time, amended, ordered engrossed.
January 31, 2014, engrossed.
February 3, 2014, read third time, passed. Yeas 48, nays 0.

HOUSE ACTION

February 10, 2014, read first time and referred to Committee on Commerce, Small Business and Economic Development.
February 13, 2014, reported — Do Pass.
February 18, 2014, read second time, amended, ordered engrossed.

ES 394—LS 6784/DI 110



Reprinted
February 19, 2014

Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

ENGROSSED SENATE BILL No. 394

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-6-3-6, AS AMENDED BY P.L.136-2007,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2014]: Sec. 6. **(a)** If a person objects or otherwise fails to obey
4 a written demand issued under section 3 of this chapter, the attorney
5 general may file in the circuit or superior court of the county in which
6 that person resides or maintains a principal place of business within the
7 state an application for an order to enforce the demand. If the person
8 does not reside or maintain a principal place of business in Indiana, the
9 application for the order to enforce the demand may be filed in the
10 Marion County circuit or superior court. Notice of hearing and a copy
11 of the application shall be served upon that person, who may appear in
12 opposition to the application. The attorney general must demonstrate
13 to the court that the demand is proper. If the court finds that the
14 demand is proper, it shall order that person to comply with the demand,
15 subject to such modification as the court may prescribe.
16 **(b) If a person fails or refuses to obey a final order entered**

ES 394—LS 6784/DI 110



under subsection (a) or an order imposing sanctions under section 6.5 of this chapter, the court may hold the person in contempt.

(c) Upon motion by that person and for good cause shown, the court may make any further order in the proceedings which justice requires to protect the person from unreasonable annoyance, embarrassment, oppression, burden, expense, or to protect privileged information, trade secrets or information which is confidential under any other provision of law. If the court finds that either party has acted in bad faith in seeking or resisting the demand, it may order that person to pay the other parties reasonable expenses including ~~attorneys'~~ **attorney's** fees.

SECTION 2. IC 4-6-3-6.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 6.5. (a) This section applies only to a:**

- (1) foreign corporation that does business in Indiana;**
- (2) foreign limited liability company that does business in Indiana; and**
- (3) person who does not reside or maintain a principal place of business in Indiana.**

(b) If a person listed in subsection (a) fails or refuses to comply with a written demand issued under section 3 of this chapter, the court may, upon the request of the attorney general or on the court's own initiative, impose one (1) or more of the following sanctions against the person:

- (1) Granting injunctive relief to restrain the person from engaging in the:**
 - (A) advertising or sale of any merchandise; or**
 - (B) conducting of any trade or commerce;****if the alleged or suspected violation involves the merchandise, trade, or commerce.**
- (2) Revoking or suspending the certificate of authority of the person to do business in Indiana.**
- (3) Enjoining the person from doing business with or being a contractor for the state of Indiana.**
- (4) Revoking or suspending any other license, permit, or certificate issued under law to the person which is necessary to perform services or engage in transactions in the industry, field, or trade that the alleged or suspected violation under this chapter occurred.**
- (5) Granting other relief as may be required, until the person fully complies with the investigative demand.**

SECTION 3. IC 4-6-3-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 9. (a)** All documentary material,



1 answers to written interrogatories, and transcripts of oral testimony that
 2 are provided pursuant to an investigative demand shall be kept
 3 confidential by the attorney general until an action is filed against a
 4 person for the violation under investigation, unless:

5 (1) confidentiality is waived by the person being investigated and
 6 the person who has testified, answered interrogatories, or
 7 produced documentary material; or ~~unless~~

8 (2) disclosure is ~~authorized by the court~~ **made by the attorney**
 9 **general to another state or federal attorney general or law**
 10 **enforcement agency** for the purposes of ~~interstate~~ cooperation in
 11 law enforcement of state or federal laws.

12 **(b) All documentary material, answers to written**
 13 **interrogatories, and transcripts of oral testimony that are provided**
 14 **to the attorney general pursuant to an investigative demand issued**
 15 **by another state or federal attorney general or law enforcement**
 16 **agency under similar authority shall be treated as if it was**
 17 **obtained pursuant to an investigative demand issued by the**
 18 **attorney general under section 3 of this chapter.**

19 SECTION 4. IC 23-17-24-1.5, AS ADDED BY P.L.245-2005,
 20 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 21 JULY 1, 2014]: Sec. 1.5. (a) This section applies to the following:

22 (1) Notwithstanding IC 23-17-1-1, all corporations organized
 23 under Indiana law for a purpose for which a corporation may be
 24 organized under this article, regardless of the date of
 25 incorporation.

26 (2) A foreign corporation that desires to transact business in
 27 Indiana.

28 (b) In addition to a dissolution under section 1 of this chapter, the
 29 attorney general may petition a court to issue one (1) or more of the
 30 following remedies:

31 (1) Injunctive relief.

32 (2) Appointment of temporary or permanent receivers.

33 (3) Permanent removal of trustees, corporate officers, or directors
 34 who have breached the fiduciary duty.

35 (4) Appointment of permanent court approved replacement
 36 trustees, corporate officers or directors, and members.

37 (c) The attorney general may seek a remedy against any or all of the
 38 following:

39 (1) If the attorney general establishes a condition enumerated in
 40 section 1(a)(1) of this chapter, a corporation.

41 (2) For a violation of the officer's duties under IC 23-17-14-2, a
 42 corporate officer.



(3) For a violation of IC 23-17-13, a corporate director.

(d) In addition to any remedies described in subsection (b), the attorney general may accept a written assurance of voluntary compliance with respect to:

(1) a past, an existing, or an imminent condition enumerated in section 1(a)(1) of this chapter; or

(2) any past, existing, or imminent violation of a duty under this article by a corporation, director, officer, member, trustee, or other corporate principal.

(e) An assurance of voluntary compliance described in subsection (d) may include a stipulation for the voluntary payment by the person of:

(1) the costs of an investigation;

(2) an amount to be held in escrow pending the outcome of an action;

(3) an amount to be held in escrow pending the outcome of an action as restitution to an aggrieved nonprofit corporation or person; or

(4) both amounts described in subdivisions (2) and (3).

(f) An assurance of voluntary compliance described in subsection (d):

(1) must be filed with; and

(2) is subject to the approval of;

the court having jurisdiction.

(g) An assurance of voluntary compliance described in subsection (d) is not considered an admission of a violation of any law.

(h) If the attorney general closes a matter by accepting an assurance of voluntary compliance described in subsection (d), the attorney general may reopen the matter for further proceedings within the period of the applicable statute of limitations.

SECTION 5. IC 24-4.7-3-6, AS AMENDED BY P.L.151-2013, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 6. (a) The consumer protection division telephone solicitation fund is established for the purpose of the administration of:

(1) this article;

(2) ~~IC 24-5-0.5-3(a)(19);~~ IC 24-5-0.5-3(b)(19); and

(3) IC 24-5-14.5.

The fund shall be used exclusively for this purpose.

(b) The division shall administer the fund.

(c) The division shall deposit all revenue received:

(1) under this article;



(2) from civil penalties deposited under IC 24-5-0.5-4(h); and
 (3) from civil penalties deposited under IC 24-5-14.5-12;
 in the fund.

(d) Money in the fund is continuously appropriated to the division for the administration of:

- (1) this article;
- (2) ~~IC 24-5-0.5-3(a)(19)~~; **IC 24-5-0.5-3(b)(19)**; and
- (3) IC 24-5-14.5.

(e) Money in the fund at the end of a state fiscal year does not revert to the state general fund. However, if the amount of money in the fund at the end of a particular state fiscal year exceeds two hundred thousand dollars (\$200,000), the treasurer of state shall transfer the excess from the fund to the state general fund.

SECTION 6. IC 24-5-0.5-2, AS AMENDED BY P.L.250-2013, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 2. (a) As used in this chapter:

(1) "Consumer transaction" means a sale, lease, assignment, award by chance, or other disposition of an item of personal property, real property, a service, or an intangible, except securities and policies or contracts of insurance issued by corporations authorized to transact an insurance business under the laws of the state of Indiana, with or without an extension of credit, to a person for purposes that are primarily personal, familial, charitable, agricultural, or household, or a solicitation to supply any of these things. However, the term includes the following:

(A) A transfer of structured settlement payment rights under IC 34-50-2.

(B) An unsolicited advertisement sent to a person by telephone facsimile machine offering a sale, lease, assignment, award by chance, or other disposition of an item of personal property, real property, a service, or an intangible.

~~(C) Collecting or attempting to collect a debt owed or due, or asserted to be owed or due, to another person.~~

(C) The collection of or attempt to collect a debt by a debt collector.

(2) "Person" means an individual, corporation, the state of Indiana or its subdivisions or agencies, business trust, estate, trust, partnership, association, nonprofit corporation or organization, or cooperative or any other legal entity.

(3) "Supplier" means the following:

(A) A seller, lessor, assignor, or other person who regularly



- 1 engages in or solicits consumer transactions, including
 2 soliciting a consumer transaction by using a telephone
 3 facsimile machine to transmit an unsolicited advertisement.
 4 The term includes a manufacturer, wholesaler, or retailer,
 5 whether or not the person deals directly with the consumer.
 6 (B) A person who contrives, prepares, sets up, operates,
 7 publicizes by means of advertisements, or promotes a pyramid
 8 promotional scheme.
 9 (C) A debt collector.
- 10 (4) "Subject of a consumer transaction" means the personal
 11 property, real property, services, or intangibles offered or
 12 furnished in a consumer transaction.
- 13 (5) "Cure" as applied to a deceptive act, means either:
 14 (A) to offer in writing to adjust or modify the consumer
 15 transaction to which the act relates to conform to the
 16 reasonable expectations of the consumer generated by such
 17 deceptive act and to perform such offer if accepted by the
 18 consumer; or
 19 (B) to offer in writing to rescind such consumer transaction
 20 and to perform such offer if accepted by the consumer.
 21 The term includes an offer in writing of one (1) or more items of
 22 value, including monetary compensation, that the supplier
 23 delivers to a consumer or a representative of the consumer if
 24 accepted by the consumer.
- 25 (6) "Offer to cure" as applied to a deceptive act is a cure that:
 26 (A) is reasonably calculated to remedy a loss claimed by the
 27 consumer; and
 28 (B) includes a minimum additional amount that is the greater
 29 of:
 30 (i) ten percent (10%) of the value of the remedy under
 31 clause (A), but not more than four thousand dollars
 32 (\$4,000); or
 33 (ii) five hundred dollars (\$500);
 34 as compensation for attorney's fees, expenses, and other costs
 35 that a consumer may incur in relation to the deceptive act.
- 36 (7) "Uncured deceptive act" means a deceptive act:
 37 (A) with respect to which a consumer who has been damaged
 38 by such act has given notice to the supplier under section 5(a)
 39 of this chapter; and
 40 (B) either:
 41 (i) no offer to cure has been made to such consumer within
 42 thirty (30) days after such notice; or



- 1 (ii) the act has not been cured as to such consumer within a
- 2 reasonable time after the consumer's acceptance of the offer
- 3 to cure.
- 4 (8) "Incurable deceptive act" means a deceptive act done by a
- 5 supplier as part of a scheme, artifice, or device with intent to
- 6 defraud or mislead. The term includes a failure of a transferee of
- 7 structured settlement payment rights to timely provide a true and
- 8 complete disclosure statement to a payee as provided under
- 9 IC 34-50-2 in connection with a direct or indirect transfer of
- 10 structured settlement payment rights.
- 11 (9) "Pyramid promotional scheme" means any program utilizing
- 12 a pyramid or chain process by which a participant in the program
- 13 gives a valuable consideration exceeding one hundred dollars
- 14 (\$100) for the opportunity or right to receive compensation or
- 15 other things of value in return for inducing other persons to
- 16 become participants for the purpose of gaining new participants
- 17 in the program. The term does not include ordinary sales of goods
- 18 or services to persons who are not purchasing in order to
- 19 participate in such a scheme.
- 20 (10) "Promoting a pyramid promotional scheme" means:
- 21 (A) inducing or attempting to induce one (1) or more other
- 22 persons to become participants in a pyramid promotional
- 23 scheme; or
- 24 (B) assisting another in promoting a pyramid promotional
- 25 scheme.
- 26 (11) "Senior consumer" means an individual who is at least sixty
- 27 (60) years of age.
- 28 (12) "Telephone facsimile machine" means equipment that has
- 29 the capacity to transcribe text or images, or both, from:
- 30 (A) paper into an electronic signal and to transmit that signal
- 31 over a regular telephone line; or
- 32 (B) an electronic signal received over a regular telephone line
- 33 onto paper.
- 34 (13) "Unsolicited advertisement" means material advertising the
- 35 commercial availability or quality of:
- 36 (A) property;
- 37 (B) goods; or
- 38 (C) services;
- 39 that is transmitted to a person without the person's prior express
- 40 invitation or permission, in writing or otherwise.
- 41 (14) "Debt" has the meaning set forth in 15 U.S.C. 1692a(5)).
- 42 (15) "Debt collector" has the meaning set forth in 15 U.S.C.



1692a(6). The term does not include a person admitted to the practice of law in Indiana if the person is acting within the course and scope of the person's practice as an attorney.

(b) As used in section ~~3(a)(15) and 3(a)(16)~~ **3(b)(15) and 3(b)(16)** of this chapter:

(1) "Directory assistance" means the disclosure of telephone number information in connection with an identified telephone service subscriber by means of a live operator or automated service.

(2) "Local telephone directory" refers to a telephone classified advertising directory or the business section of a telephone directory that is distributed by a telephone company or directory publisher to subscribers located in the local exchanges contained in the directory. The term includes a directory that includes listings of more than one (1) telephone company.

(3) "Local telephone number" refers to a telephone number that has the three (3) number prefix used by the provider of telephone service for telephones physically located within the area covered by the local telephone directory in which the number is listed. The term does not include long distance numbers or 800-, 888-, or 900- exchange numbers listed in a local telephone directory.

SECTION 7. IC 24-5-0.5-3, AS AMENDED BY P.L.273-2013, SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 3. **(a) A supplier may not commit an unfair, abusive, or deceptive act, omission, or practice in connection with a consumer transaction. Such an act, omission, or practice by a supplier is a violation of this chapter whether it occurs before, during, or after the transaction. An act, omission, or practice prohibited by this section includes both implicit and explicit misrepresentations.**

~~(a)~~ **(b) Without limiting the scope of subsection (a),** the following acts, and the following representations as to the subject matter of a consumer transaction, made orally, in writing, or by electronic communication, by a supplier, are deceptive acts:

(1) That such subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which the supplier knows or should reasonably know it does not have.

(2) That such subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not and if the supplier knows or should reasonably know that it is not.

(3) That such subject of a consumer transaction is new or unused,



1 if it is not and if the supplier knows or should reasonably know
2 that it is not.

3 (4) That such subject of a consumer transaction will be supplied
4 to the public in greater quantity than the supplier intends or
5 reasonably expects.

6 (5) That replacement or repair constituting the subject of a
7 consumer transaction is needed, if it is not and if the supplier
8 knows or should reasonably know that it is not.

9 (6) That a specific price advantage exists as to such subject of a
10 consumer transaction, if it does not and if the supplier knows or
11 should reasonably know that it does not.

12 (7) That the supplier has a sponsorship, approval, or affiliation in
13 such consumer transaction the supplier does not have, and which
14 the supplier knows or should reasonably know that the supplier
15 does not have.

16 (8) That such consumer transaction involves or does not involve
17 a warranty, a disclaimer of warranties, or other rights, remedies,
18 or obligations, if the representation is false and if the supplier
19 knows or should reasonably know that the representation is false.

20 (9) That the consumer will receive a rebate, discount, or other
21 benefit as an inducement for entering into a sale or lease in return
22 for giving the supplier the names of prospective consumers or
23 otherwise helping the supplier to enter into other consumer
24 transactions, if earning the benefit, rebate, or discount is
25 contingent upon the occurrence of an event subsequent to the time
26 the consumer agrees to the purchase or lease.

27 (10) That the supplier is able to deliver or complete the subject of
28 the consumer transaction within a stated period of time, when the
29 supplier knows or should reasonably know the supplier could not.
30 If no time period has been stated by the supplier, there is a
31 presumption that the supplier has represented that the supplier
32 will deliver or complete the subject of the consumer transaction
33 within a reasonable time, according to the course of dealing or the
34 usage of the trade.

35 (11) That the consumer will be able to purchase the subject of the
36 consumer transaction as advertised by the supplier, if the supplier
37 does not intend to sell it.

38 (12) That the replacement or repair constituting the subject of a
39 consumer transaction can be made by the supplier for the estimate
40 the supplier gives a customer for the replacement or repair, if the
41 specified work is completed and:

42 (A) the cost exceeds the estimate by an amount equal to or



- 1 greater than ten percent (10%) of the estimate;
- 2 (B) the supplier did not obtain written permission from the
- 3 customer to authorize the supplier to complete the work even
- 4 if the cost would exceed the amounts specified in clause (A);
- 5 (C) the total cost for services and parts for a single transaction
- 6 is more than seven hundred fifty dollars (\$750); and
- 7 (D) the supplier knew or reasonably should have known that
- 8 the cost would exceed the estimate in the amounts specified in
- 9 clause (A).
- 10 (13) That the replacement or repair constituting the subject of a
- 11 consumer transaction is needed, and that the supplier disposes of
- 12 the part repaired or replaced earlier than seventy-two (72) hours
- 13 after both:
- 14 (A) the customer has been notified that the work has been
- 15 completed; and
- 16 (B) the part repaired or replaced has been made available for
- 17 examination upon the request of the customer.
- 18 (14) Engaging in the replacement or repair of the subject of a
- 19 consumer transaction if the consumer has not authorized the
- 20 replacement or repair, and if the supplier knows or should
- 21 reasonably know that it is not authorized.
- 22 (15) The act of misrepresenting the geographic location of the
- 23 supplier by listing a fictitious business name or an assumed
- 24 business name (as described in IC 23-15-1) in a local telephone
- 25 directory if:
- 26 (A) the name misrepresents the supplier's geographic location;
- 27 (B) the listing fails to identify the locality and state of the
- 28 supplier's business;
- 29 (C) calls to the local telephone number are routinely forwarded
- 30 or otherwise transferred to a supplier's business location that
- 31 is outside the calling area covered by the local telephone
- 32 directory; and
- 33 (D) the supplier's business location is located in a county that
- 34 is not contiguous to a county in the calling area covered by the
- 35 local telephone directory.
- 36 (16) The act of listing a fictitious business name or assumed
- 37 business name (as described in IC 23-15-1) in a directory
- 38 assistance database if:
- 39 (A) the name misrepresents the supplier's geographic location;
- 40 (B) calls to the local telephone number are routinely forwarded
- 41 or otherwise transferred to a supplier's business location that
- 42 is outside the local calling area; and



- 1 (C) the supplier's business location is located in a county that
- 2 is not contiguous to a county in the local calling area.
- 3 (17) The violation by a supplier of IC 24-3-4 concerning
- 4 cigarettes for import or export.
- 5 (18) The act of a supplier in knowingly selling or reselling a
- 6 product to a consumer if the product has been recalled, whether
- 7 by the order of a court or a regulatory body, or voluntarily by the
- 8 manufacturer, distributor, or retailer, unless the product has been
- 9 repaired or modified to correct the defect that was the subject of
- 10 the recall.
- 11 (19) The violation by a supplier of 47 U.S.C. 227, including any
- 12 rules or regulations issued under 47 U.S.C. 227.
- 13 (20) The violation by a supplier of the federal Fair Debt
- 14 Collection Practices Act (15 U.S.C. 1692 et seq.), including any
- 15 rules or regulations issued under the federal Fair Debt Collection
- 16 Practices Act (15 U.S.C. 1692 et seq.).
- 17 (21) A violation of IC 24-5-7 (concerning health spa services), as
- 18 set forth in IC 24-5-7-17.
- 19 (22) A violation of IC 24-5-8 (concerning business opportunity
- 20 transactions), as set forth in IC 24-5-8-20.
- 21 (23) A violation of IC 24-5-10 (concerning home consumer
- 22 transactions), as set forth in IC 24-5-10-18.
- 23 (24) A violation of IC 24-5-11 (concerning home improvement
- 24 contracts), as set forth in IC 24-5-11-14.
- 25 (25) A violation of IC 24-5-12 (concerning telephone
- 26 solicitations), as set forth in IC 24-5-12-23.
- 27 (26) A violation of IC 24-5-13.5 (concerning buyback motor
- 28 vehicles), as set forth in IC 24-5-13.5-14.
- 29 (27) A violation of IC 24-5-14 (concerning automatic
- 30 dialing-announcing devices), as set forth in IC 24-5-14-13.
- 31 (28) A violation of IC 24-5-15 (concerning credit services
- 32 organizations), as set forth in IC 24-5-15-11.
- 33 (29) A violation of IC 24-5-16 (concerning unlawful motor
- 34 vehicle subleasing), as set forth in IC 24-5-16-18.
- 35 (30) A violation of IC 24-5-17 (concerning environmental
- 36 marketing claims), as set forth in IC 24-5-17-14.
- 37 (31) A violation of IC 24-5-19 (concerning deceptive commercial
- 38 solicitation), as set forth in IC 24-5-19-11.
- 39 (32) A violation of IC 24-5-21 (concerning prescription drug
- 40 discount cards), as set forth in IC 24-5-21-7.
- 41 (33) A violation of IC 24-5-23.5-7 (concerning real estate
- 42 appraisals), as set forth in IC 24-5-23.5-9.



(34) A violation of IC 24-5-26 (concerning identity theft), as set forth in IC 24-5-26-3.

(35) A violation of IC 24-5.5 (concerning mortgage rescue fraud), as set forth in IC 24-5.5-6-1.

(36) A violation of IC 24-8 (concerning promotional gifts and contests), as set forth in IC 24-8-6-3.

(37) A violation of IC 21-18.5-6 (concerning representations made by a postsecondary credit bearing proprietary educational institution), as set forth in IC 21-18.5-6-22.5.

~~(b)~~ (c) Any representations on or within a product or its packaging or in advertising or promotional materials which would constitute a deceptive act shall be the deceptive act both of the supplier who places such representation thereon or therein, or who authored such materials, and such other suppliers who shall state orally or in writing that such representation is true if such other supplier shall know or have reason to know that such representation was false.

~~(c)~~ (d) If a supplier shows by a preponderance of the evidence that an act resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, such act shall not be deceptive within the meaning of this chapter.

~~(d)~~ (e) It shall be a defense to any action brought under this chapter that the representation constituting an alleged deceptive act was one made in good faith by the supplier without knowledge of its falsity and in reliance upon the oral or written representations of the manufacturer, the person from whom the supplier acquired the product, any testing organization, or any other person provided that the source thereof is disclosed to the consumer.

~~(e)~~ (f) For purposes of subsection ~~(a)(12)~~; **(b)(12)**, a supplier that provides estimates before performing repair or replacement work for a customer shall give the customer a written estimate itemizing as closely as possible the price for labor and parts necessary for the specific job before commencing the work.

~~(f)~~ (g) For purposes of subsection ~~(a)(15)~~ **(b)(15)** and ~~(a)(16)~~; **(b)(16)**, a telephone company or other provider of a telephone directory or directory assistance service or its officer or agent is immune from liability for publishing the listing of a fictitious business name or assumed business name of a supplier in its directory or directory assistance database unless the telephone company or other provider of a telephone directory or directory assistance service is the same person as the supplier who has committed the deceptive act.

~~(g)~~ (h) For purposes of subsection ~~(a)(18)~~; **(b)(18)**, it is an affirmative defense to any action brought under this chapter that the



1 product has been altered by a person other than the defendant to render
2 the product completely incapable of serving its original purpose.

3 SECTION 8. IC 24-5-0.5-4, AS AMENDED BY P.L.250-2013,
4 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2014]: Sec. 4. (a) A person relying upon an uncured or
6 incurable deceptive act may bring an action for the damages actually
7 suffered as a consumer as a result of the deceptive act or five hundred
8 dollars (\$500), whichever is greater. The court may increase damages
9 for a willful deceptive act in an amount that does not exceed the greater
10 of:

11 (1) three (3) times the actual damages of the consumer suffering
12 the loss; or

13 (2) one thousand dollars (\$1,000).

14 Except as provided in subsection (j), the court may award reasonable
15 attorney fees to the party that prevails in an action under this
16 subsection. This subsection does not apply to a consumer transaction
17 in real property, including a claim or action involving a construction
18 defect (as defined in IC 32-27-3-1(5)) brought against a construction
19 professional (as defined in IC 32-27-3-1(4)), except for purchases of
20 time shares and camping club memberships. This subsection does not
21 apply with respect to a deceptive act described in section ~~3(a)(20)~~
22 **3(b)(20)** of this chapter. This subsection also does not apply to a
23 violation of IC 24-4.7, IC 24-5-12, IC 24-5-14, or IC 24-5-14.5. Actual
24 damages awarded to a person under this section have priority over any
25 civil penalty imposed under this chapter.

26 (b) Any person who is entitled to bring an action under subsection
27 (a) on the person's own behalf against a supplier for damages for a
28 deceptive act may bring a class action against such supplier on behalf
29 of any class of persons of which that person is a member and which has
30 been damaged by such deceptive act, subject to and under the Indiana
31 Rules of Trial Procedure governing class actions, except as herein
32 expressly provided. Except as provided in subsection (j), the court may
33 award reasonable attorney fees to the party that prevails in a class
34 action under this subsection, provided that such fee shall be determined
35 by the amount of time reasonably expended by the attorney and not by
36 the amount of the judgment, although the contingency of the fee may
37 be considered. Except in the case of an extension of time granted by the
38 attorney general under IC 24-10-2-2(b) in an action subject to IC 24-10,
39 any money or other property recovered in a class action under this
40 subsection which cannot, with due diligence, be restored to consumers
41 within one (1) year after the judgment becomes final shall be returned
42 to the party depositing the same. This subsection does not apply to a



1 consumer transaction in real property, except for purchases of time
 2 shares and camping club memberships. This subsection does not apply
 3 with respect to a deceptive act described in section ~~3(a)(20)~~ **3(b)(20)**
 4 of this chapter. Actual damages awarded to a class have priority over
 5 any civil penalty imposed under this chapter.

6 (c) The attorney general may bring an action to enjoin a deceptive
 7 act, including a deceptive act described in section ~~3(a)(20)~~ **3(b)(20)** of
 8 this chapter, notwithstanding subsections (a) and (b). However, the
 9 attorney general may seek to enjoin patterns of incurable deceptive acts
 10 with respect to consumer transactions in real property. In addition, the
 11 court may:

12 (1) issue an injunction;

13 (2) order the supplier to make payment of the money unlawfully
 14 received from the aggrieved consumers to be held in escrow for
 15 distribution to aggrieved consumers;

16 (3) for a knowing violation against a senior consumer, increase
 17 the amount of restitution ordered under subdivision (2) in any
 18 amount up to three (3) times the amount of damages incurred or
 19 value of property or assets lost;

20 (4) order the supplier to pay to the state the reasonable costs of
 21 the attorney general's investigation and prosecution related to the
 22 action;

23 (5) provide for the appointment of a receiver; and

24 (6) order the department of state revenue to suspend the supplier's
 25 registered retail merchant certificate, subject to the requirements
 26 and prohibitions contained in IC 6-2.5-8-7(i), if the court finds
 27 that a violation of this chapter involved the sale or solicited sale
 28 of a synthetic drug (as defined in IC 35-31.5-2-321) or a synthetic
 29 drug lookalike substance (as defined in IC 35-31.5-2-321.5).

30 (d) In an action under subsection (a), (b), or (c), the court may void
 31 or limit the application of contracts or clauses resulting from deceptive
 32 acts and order restitution to be paid to aggrieved consumers.

33 (e) In any action under subsection (a) or (b), upon the filing of the
 34 complaint or on the appearance of any defendant, claimant, or any
 35 other party, or at any later time, the trial court, the supreme court, or the
 36 court of appeals may require the plaintiff, defendant, claimant, or any
 37 other party or parties to give security, or additional security, in such
 38 sum as the court shall direct to pay all costs, expenses, and
 39 disbursements that shall be awarded against that party or which that
 40 party may be directed to pay by any interlocutory order by the final
 41 judgment or on appeal.

42 (f) Any person who violates the terms of an injunction issued under



1 subsection (c) shall forfeit and pay to the state a civil penalty of not
 2 more than fifteen thousand dollars (\$15,000) per violation. For the
 3 purposes of this section, the court issuing an injunction shall retain
 4 jurisdiction, the cause shall be continued, and the attorney general
 5 acting in the name of the state may petition for recovery of civil
 6 penalties. Whenever the court determines that an injunction issued
 7 under subsection (c) has been violated, the court shall award
 8 reasonable costs to the state.

9 (g) If a court finds any person has knowingly violated section 3 or
 10 10 of this chapter, other than section ~~3(a)(19)~~ **3(b)(19)** or ~~3(a)(20)~~
 11 **3(b)(20)** of this chapter, the attorney general, in an action pursuant to
 12 subsection (c), may recover from the person on behalf of the state a
 13 civil penalty of a fine not exceeding five thousand dollars (\$5,000) per
 14 violation.

15 (h) If a court finds that a person has violated section ~~3(a)(19)~~
 16 **3(b)(19)** of this chapter, the attorney general, in an action under
 17 subsection (c), may recover from the person on behalf of the state a
 18 civil penalty as follows:

19 (1) For a knowing or intentional violation, one thousand five
 20 hundred dollars (\$1,500).

21 (2) For a violation other than a knowing or intentional violation,
 22 five hundred dollars (\$500).

23 A civil penalty recovered under this subsection shall be deposited in
 24 the consumer protection division telephone solicitation fund
 25 established by IC 24-4.7-3-6 to be used for the administration and
 26 enforcement of section ~~3(a)(19)~~ **3(b)(19)** of this chapter.

27 (i) A senior consumer relying upon an uncured or incurable
 28 deceptive act, including an act related to hypnotism, may bring an
 29 action to recover treble damages, if appropriate.

30 (j) An offer to cure is:

31 (1) not admissible as evidence in a proceeding initiated under this
 32 section unless the offer to cure is delivered by a supplier to the
 33 consumer or a representative of the consumer before the supplier
 34 files the supplier's initial response to a complaint; and

35 (2) only admissible as evidence in a proceeding initiated under
 36 this section to prove that a supplier is not liable for attorney's fees
 37 under subsection (k).

38 If the offer to cure is timely delivered by the supplier, the supplier may
 39 submit the offer to cure as evidence to prove in the proceeding in
 40 accordance with the Indiana Rules of Trial Procedure that the supplier
 41 made an offer to cure.

42 (k) A supplier may not be held liable for the attorney's fees and



1 court costs of the consumer that are incurred following the timely
 2 delivery of an offer to cure as described in subsection (j) unless the
 3 actual damages awarded, not including attorney's fees and costs, exceed
 4 the value of the offer to cure.

5 (l) If a court finds that a person has knowingly violated section
 6 ~~3(a)(20)~~ **3(b)(20)** of this chapter, the attorney general, in an action
 7 under subsection (c), may recover from the person on behalf of the
 8 state a civil penalty not exceeding one thousand dollars (\$1,000) per
 9 consumer. In determining the amount of the civil penalty in any action
 10 by the attorney general under this subsection, the court shall consider,
 11 among other relevant factors, the frequency and persistence of
 12 noncompliance by the debt collector, the nature of the noncompliance,
 13 and the extent to which the noncompliance was intentional. A person
 14 may not be held liable in any action by the attorney general for a
 15 violation of section ~~3(a)(20)~~ **3(b)(20)** of this chapter if the person
 16 shows by a preponderance of evidence that the violation was not
 17 intentional and resulted from a bona fide error, notwithstanding the
 18 maintenance of procedures reasonably adapted to avoid the error. A
 19 person may not be held liable in any action for a violation of this
 20 chapter for contacting a person other than the debtor, if the contact is
 21 made in compliance with the Fair Debt Collection Practices Act.

22 SECTION 9. IC 24-5-24.5 IS ADDED TO THE INDIANA CODE
 23 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 24 JULY 1, 2014]:

25 **Chapter 24.5. Security Freezes for Protected Consumers**

26 **Sec. 1. As used in this chapter, "consumer" means an individual**
 27 **whose principal residence is in Indiana.**

28 **Sec. 2. As used in this chapter, "consumer report" has the**
 29 **meaning set forth in IC 24-5-24-2.**

30 **Sec. 3. As used in this chapter, "consumer reporting agency"**
 31 **has the meaning set forth in IC 24-5-24-3.**

32 **Sec. 4. As used in this chapter, "protected consumer" means an**
 33 **individual who is:**

- 34 (1) less than sixteen (16) years of age; or
- 35 (2) an incapacitated person (as defined in IC 29-3-1-7.5) for
- 36 whom a court has appointed a guardian.

37 **Sec. 5. As used in this chapter, "record" means a compilation of**
 38 **information that:**

- 39 (1) identifies a protected consumer;
- 40 (2) is created by a consumer reporting agency solely for the
- 41 purpose of complying with this chapter; and
- 42 (3) is not created or used to consider the protected consumer's



credit worthiness, credit standing, credit capacity, character,
general reputation, personal characteristics, or mode of living.

Sec. 6. As used in this chapter, "representative" means a person
who provides to a consumer reporting agency sufficient proof of
authority to act on behalf of a protected consumer.

Sec. 7. As used in this chapter, "security freeze" means:

(1) if a consumer reporting agency does not have a consumer
report pertaining to a protected consumer, a restriction that:

(A) is placed on the protected consumer's record in
accordance with this chapter; and

(B) prohibits the consumer reporting agency from
releasing the protected consumer's record except as
provided under this chapter; or

(2) if a consumer reporting agency has a consumer report for
the protected consumer, a restriction that:

(A) is placed on the protected consumer's consumer report
in accordance with this chapter; and

(B) prohibits the consumer reporting agency from
releasing the protected consumer's consumer report or any
information derived from the protected consumer's
consumer report except as provided in this chapter.

Sec. 8. As used in this chapter, "sufficient proof of authority"
means documentation that shows a representative has authority to
act on behalf of a protected consumer and includes:

(1) an order issued by a court of law;

(2) a lawfully executed and valid power of attorney; or

(3) a written, notarized statement signed by a representative
that expressly describes the authority of the representative to
act on behalf of a protected consumer.

Sec. 9. As used in this chapter, "sufficient proof of
identification" means information or documentation that identifies
a protected consumer or a representative of a protective consumer
and includes:

(1) a Social Security number or a copy of a Social Security
card issued by the Social Security Administration;

(2) a certified or official copy of a birth certificate issued by
an entity authorized to issue the birth certificate; or

(3) a copy of a valid state issued driver's license, a valid state
issued identification card, or any valid government issued
identification.

Sec. 10. This chapter does not apply to the use of a protected
consumer's consumer report or record by:



1 (1) a person administering a credit file monitoring
2 subscription service to which:

3 (A) the protected consumer has subscribed; or

4 (B) the representative of the protected consumer has
5 subscribed on behalf of the protected consumer;

6 (2) a person providing the protected consumer or the
7 protected consumer's representative with a copy of the
8 protected consumer's consumer report on request of the
9 protected consumer or the protected consumer's
10 representative;

11 (3) a check services or fraud prevention services company
12 that issues:

13 (A) reports on incidents of fraud; or

14 (B) authorizations for the purpose of approving, or
15 processing negotiable instruments, electronic funds
16 transfers, or similar payment methods;

17 (4) a deposit account information service company that issues
18 reports regarding account closures due to fraud, substantial
19 overdrafts, automated teller machine abuse, or similar
20 negative information regarding a consumer to inquiring
21 banks or other financial institutions for use only in reviewing
22 a consumer request for a deposit account at the inquiring
23 bank or financial institution;

24 (5) an insurance company for the purpose of conducting its
25 ordinary business;

26 (6) a consumer reporting agency that:

27 (A) acts only to resell credit information by assembling and
28 merging information contained in a data base of another
29 consumer reporting agency or multiple consumer
30 reporting agencies; and

31 (B) does not maintain a permanent data base of credit
32 information from which new credit reports are produced;
33 or

34 (7) a consumer reporting agency's database or file that
35 consists of the following information concerning, and used for,
36 one (1) or more of the following, but not for credit granting
37 purposes:

38 (A) Criminal record information.

39 (B) Fraud protection or detection.

40 (C) Personal loss history information.

41 (D) Employment, tenant, or individual background
42 screening.



1 **Sec. 11. (a) A consumer reporting agency shall place a security**
 2 **freeze on a protected consumer's consumer report if:**

3 **(1) the consumer reporting agency receives a request from the**
 4 **protected consumer's representative for the placement of the**
 5 **security freeze under this section; and**

6 **(2) the protected consumer's representative:**

7 **(A) submits the request to the consumer reporting agency**
 8 **at the address or other point of contact and in the manner**
 9 **specified by the consumer reporting agency;**

10 **(B) provides to the consumer reporting agency sufficient**
 11 **proof of identification of the protected consumer and the**
 12 **representative; and**

13 **(C) provides to the consumer reporting agency sufficient**
 14 **proof of authority to act on behalf of the protected**
 15 **consumer; and**

16 **(3) the protected consumer's representative pays to the**
 17 **consumer reporting agency a fee as provided in section 17 of**
 18 **this chapter.**

19 **(b) If a consumer reporting agency does not have a consumer**
 20 **report pertaining to a protected consumer when the consumer**
 21 **reporting agency receives a request under subsection (a), the**
 22 **consumer reporting agency shall create a record for the protected**
 23 **consumer.**

24 **Sec. 12. Not later than thirty (30) days after receiving a request**
 25 **that meets the requirements of section 11(a) of this chapter, a**
 26 **consumer reporting agency shall place a security freeze for the**
 27 **protected consumer.**

28 **Sec. 13. Unless a security freeze for a protected consumer is**
 29 **removed in accordance with section 16 of this chapter, a consumer**
 30 **reporting agency may not release:**

31 **(1) the protected consumer's consumer report;**

32 **(2) any information derived from the protected consumer's**
 33 **consumer report; or**

34 **(3) any record created for the protected consumer under**
 35 **section 11(b) of this chapter.**

36 **Sec. 14. A security freeze for a protected consumer must remain**
 37 **in effect until:**

38 **(1) the protected consumer or the protected consumer's**
 39 **representative requests that the consumer reporting agency**
 40 **remove the security freeze under section 15 of this chapter; or**

41 **(2) the security freeze is removed in accordance with section**
 42 **16 of this chapter.**



1 **Sec. 15. If a protected consumer or a protected consumer's**
 2 **representative wishes to remove a security freeze for the protected**
 3 **consumer, the protected consumer or the protected consumer's**
 4 **representative shall:**

5 **(1) submit a request for the removal of the security freeze to**
 6 **the consumer reporting agency at the address or other point**
 7 **of contact and in the manner specified by the consumer**
 8 **reporting agency;**

9 **(2) provide to the consumer reporting agency:**

10 **(A) in the case of a request by a protected consumer:**

11 **(i) proof that the sufficient proof of authority for the**
 12 **protected consumer's representative to act on behalf of**
 13 **the protective consumer is no longer valid; and**

14 **(ii) sufficient proof of identification of the protected**
 15 **consumer; or**

16 **(B) in the case of a request by the representative of a**
 17 **protected consumer:**

18 **(i) sufficient proof of identification of the protected**
 19 **consumer and the representative; and**

20 **(ii) sufficient proof of authority to act on behalf of the**
 21 **protected consumer; and**

22 **(3) pay to the consumer reporting agency a fee as provided in**
 23 **section 17 of this chapter.**

24 **Sec. 16. Not later than thirty (30) days after receiving a request**
 25 **that meets the requirements of section 15 of this chapter, the**
 26 **consumer reporting agency shall remove the security freeze for the**
 27 **protected consumer.**

28 **Sec. 17. (a) Except as provided in subsection (b), a consumer**
 29 **reporting agency may not impose a fee for any service described in**
 30 **this chapter.**

31 **(b) A consumer reporting agency may charge a reasonable fee,**
 32 **not exceeding five dollars (\$5), for each placement or removal of a**
 33 **security freeze under this chapter.**

34 **(c) A consumer reporting agency may not charge a fee under**
 35 **this chapter if:**

36 **(1) the protected consumer's representative:**

37 **(A) has obtained a police report or affidavit of alleged**
 38 **identity fraud against the protected consumer; and**

39 **(B) provides a copy of the report or affidavit to the**
 40 **consumer reporting agency; or**

41 **(2) a request for the placement or removal of a security freeze**
 42 **is for a protected consumer who is less than sixteen (16) years**



1 of age at the time of the request and the consumer reporting
2 agency has a consumer report concerning the protected
3 consumer.
4 **Sec. 18.** A consumer reporting agency may remove a security
5 freeze for a protected consumer or delete a record of a protected
6 consumer if the security freeze was placed or the record was
7 created based on a material misrepresentation of fact by the
8 protected consumer or the protected consumer's representative.
9 **Sec. 19.** The provisions of this chapter are severable as provided
10 in IC 1-1-1-8(b).



COMMITTEE REPORT

Madam President: The Senate Committee on Civil Law, to which was referred Senate Bill No. 394, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 12, delete lines 12 through 13.

and when so amended that said bill do pass.

(Reference is to SB 394 as introduced.)

ZAKAS, Chairperson

Committee Vote: Yeas 8, Nays 1.

SENATE MOTION

Madam President: I move that Senate Bill 394 be amended to read as follows:

Page 4, line 20, after "described" insert "**in**".

Page 4, line 27, delete "However, a violation of the terms of the assurance of".

Page 4, delete lines 28 through 29.

(Reference is to SB 394 as printed January 29, 2014.)

HEAD

COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce, Small Business and Economic Development, to which was referred Senate Bill 394, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to SB 394 as printed January 31, 2014.)

Committee Vote: Yeas 11, Nays 0

Representative Messmer



HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 394 be amended to read as follows:

Page 16, after line 21, begin a new paragraph and insert:

"SECTION 9. IC 24-5-24.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]:

Chapter 24.5. Security Freezes for Protected Consumers

Sec. 1. As used in this chapter, "consumer" means an individual whose principal residence is in Indiana.

Sec. 2. As used in this chapter, "consumer report" has the meaning set forth in IC 24-5-24-2.

Sec. 3. As used in this chapter, "consumer reporting agency" has the meaning set forth in IC 24-5-24-3.

Sec. 4. As used in this chapter, "protected consumer" means an individual who is:

- (1) less than sixteen (16) years of age; or**
- (2) an incapacitated person (as defined in IC 29-3-1-7.5) for whom a court has appointed a guardian.**

Sec. 5. As used in this chapter, "record" means a compilation of information that:

- (1) identifies a protected consumer;**
- (2) is created by a consumer reporting agency solely for the purpose of complying with this chapter; and**
- (3) is not created or used to consider the protected consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.**

Sec. 6. As used in this chapter, "representative" means a person who provides to a consumer reporting agency sufficient proof of authority to act on behalf of a protected consumer.

Sec. 7. As used in this chapter, "security freeze" means:

- (1) if a consumer reporting agency does not have a consumer report pertaining to a protected consumer, a restriction that:**
 - (A) is placed on the protected consumer's record in accordance with this chapter; and**
 - (B) prohibits the consumer reporting agency from releasing the protected consumer's record except as provided under this chapter; or**
- (2) if a consumer reporting agency has a consumer report for the protected consumer, a restriction that:**
 - (A) is placed on the protected consumer's consumer report in accordance with this chapter; and**



(B) prohibits the consumer reporting agency from releasing the protected consumer's consumer report or any information derived from the protected consumer's consumer report except as provided in this chapter.

Sec. 8. As used in this chapter, "sufficient proof of authority" means documentation that shows a representative has authority to act on behalf of a protected consumer and includes:

- (1) an order issued by a court of law;**
- (2) a lawfully executed and valid power of attorney; or**
- (3) a written, notarized statement signed by a representative that expressly describes the authority of the representative to act on behalf of a protected consumer.**

Sec. 9. As used in this chapter, "sufficient proof of identification" means information or documentation that identifies a protected consumer or a representative of a protective consumer and includes:

- (1) a Social Security number or a copy of a Social Security card issued by the Social Security Administration;**
- (2) a certified or official copy of a birth certificate issued by an entity authorized to issue the birth certificate; or**
- (3) a copy of a valid state issued driver's license, a valid state issued identification card, or any valid government issued identification.**

Sec. 10. This chapter does not apply to the use of a protected consumer's consumer report or record by:

- (1) a person administering a credit file monitoring subscription service to which:**
 - (A) the protected consumer has subscribed; or**
 - (B) the representative of the protected consumer has subscribed on behalf of the protected consumer;**
- (2) a person providing the protected consumer or the protected consumer's representative with a copy of the protected consumer's consumer report on request of the protected consumer or the protected consumer's representative;**
- (3) a check services or fraud prevention services company that issues:**
 - (A) reports on incidents of fraud; or**
 - (B) authorizations for the purpose of approving, or processing negotiable instruments, electronic funds transfers, or similar payment methods;**
- (4) a deposit account information service company that issues**



reports regarding account closures due to fraud, substantial overdrafts, automated teller machine abuse, or similar negative information regarding a consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution;

(5) an insurance company for the purpose of conducting its ordinary business;

(6) a consumer reporting agency that:

(A) acts only to resell credit information by assembling and merging information contained in a data base of another consumer reporting agency or multiple consumer reporting agencies; and

(B) does not maintain a permanent data base of credit information from which new credit reports are produced;

or

(7) a consumer reporting agency's database or file that consists of the following information concerning, and used for, one (1) or more of the following, but not for credit granting purposes:

(A) Criminal record information.

(B) Fraud protection or detection.

(C) Personal loss history information.

(D) Employment, tenant, or individual background screening.

Sec. 11. (a) A consumer reporting agency shall place a security freeze on a protected consumer's consumer report if:

(1) the consumer reporting agency receives a request from the protected consumer's representative for the placement of the security freeze under this section; and

(2) the protected consumer's representative:

(A) submits the request to the consumer reporting agency at the address or other point of contact and in the manner specified by the consumer reporting agency;

(B) provides to the consumer reporting agency sufficient proof of identification of the protected consumer and the representative; and

(C) provides to the consumer reporting agency sufficient proof of authority to act on behalf of the protected consumer; and

(3) the protected consumer's representative pays to the consumer reporting agency a fee as provided in section 17 of



this chapter.

(b) If a consumer reporting agency does not have a consumer report pertaining to a protected consumer when the consumer reporting agency receives a request under subsection (a), the consumer reporting agency shall create a record for the protected consumer.

Sec. 12. Not later than thirty (30) days after receiving a request that meets the requirements of section 11(a) of this chapter, a consumer reporting agency shall place a security freeze for the protected consumer.

Sec. 13. Unless a security freeze for a protected consumer is removed in accordance with section 16 of this chapter, a consumer reporting agency may not release:

- (1) the protected consumer's consumer report;
- (2) any information derived from the protected consumer's consumer report; or
- (3) any record created for the protected consumer under section 11(b) of this chapter.

Sec. 14. A security freeze for a protected consumer must remain in effect until:

- (1) the protected consumer or the protected consumer's representative requests that the consumer reporting agency remove the security freeze under section 15 of this chapter; or
- (2) the security freeze is removed in accordance with section 16 of this chapter.

Sec. 15. If a protected consumer or a protected consumer's representative wishes to remove a security freeze for the protected consumer, the protected consumer or the protected consumer's representative shall:

- (1) submit a request for the removal of the security freeze to the consumer reporting agency at the address or other point of contact and in the manner specified by the consumer reporting agency;
- (2) provide to the consumer reporting agency:
 - (A) in the case of a request by a protected consumer:
 - (i) proof that the sufficient proof of authority for the protected consumer's representative to act on behalf of the protective consumer is no longer valid; and
 - (ii) sufficient proof of identification of the protected consumer; or
 - (B) in the case of a request by the representative of a protected consumer:



- (i) sufficient proof of identification of the protected consumer and the representative; and
- (ii) sufficient proof of authority to act on behalf of the protected consumer; and
- (3) pay to the consumer reporting agency a fee as provided in section 17 of this chapter.

Sec. 16. Not later than thirty (30) days after receiving a request that meets the requirements of section 15 of this chapter, the consumer reporting agency shall remove the security freeze for the protected consumer.

Sec. 17. (a) Except as provided in subsection (b), a consumer reporting agency may not impose a fee for any service described in this chapter.

(b) A consumer reporting agency may charge a reasonable fee, not exceeding five dollars (\$5), for each placement or removal of a security freeze under this chapter.

(c) A consumer reporting agency may not charge a fee under this chapter if:

- (1)** the protected consumer's representative:
 - (A)** has obtained a police report or affidavit of alleged identity fraud against the protected consumer; and
 - (B)** provides a copy of the report or affidavit to the consumer reporting agency; or
- (2)** a request for the placement or removal of a security freeze is for a protected consumer who is less than sixteen (16) years of age at the time of the request and the consumer reporting agency has a consumer report concerning the protected consumer.

Sec. 18. A consumer reporting agency may remove a security freeze for a protected consumer or delete a record of a protected consumer if the security freeze was placed or the record was created based on a material misrepresentation of fact by the protected consumer or the protected consumer's representative.

Sec. 19. The provisions of this chapter are severable as provided in IC 1-1-1-8(b)."

Renumber all SECTIONS consecutively.

(Reference is to ESB 394 as printed February 14, 2014.)

FORESTAL

